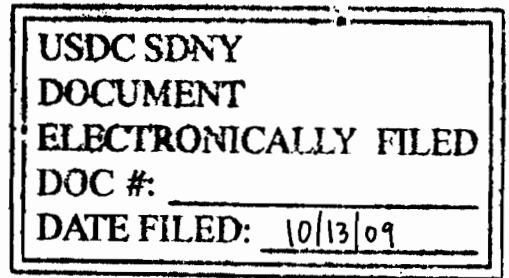


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**



----- X
**DAVID FLOYD, LALIT CLARKSON,
DEON DENNIS, and DAVID OURLICHT,**
on behalf of themselves and all others
similarly situated,

Plaintiffs,

- against -

THE CITY OF NEW YORK, *et al.*,

Defendants.
----- X

ORDER

08 Civ. 1034 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

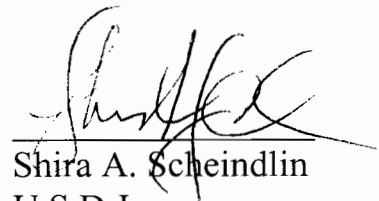
On September 1, 2009, this Court ordered Defendants to produce to Plaintiffs: (a) all data, including reports and/or summaries and the entire electronic record generated by Defendants as a result of the use of the RAND software; or (b) an affidavit of a person who has knowledge of the technical issues associated with producing such materials describing why it would be unduly burdensome for Defendants to produce the material.

Defendants produced a declaration from Thomas Tigh, the president of SuperiorGlacier, Inc., stating that, in summary, "it will likely be very expensive

to produce a redacted copy of the RAND NYPD Internal Benchmark report, and particularly so if the hyperlink functionality is to be retained.” He also stated that he had “recently become aware of the possibility of other programmatic solutions. However, additional details are not available at this time and any such solution would require further research and the cost of programming time and tools.” This demonstrates that he does not have the requisite technical knowledge. Plaintiffs argue that this declaration is insufficient and does not meet Defendants’ obligation to submit a statement from a “person who has knowledge of the technical issues.” Accordingly, all parties have agreed to the Court’s appointment of a neutral expert to determine whether producing the requested materials would be unduly burdensome.

It is hereby ordered that FTI Consulting is appointed as the neutral expert. FTI has agreed to a rate of \$300 per hour, the cost of which shall be borne by Defendants, subject to reallocation by the Court after receipt of the report. FTI may consult with any party or the expert retained by any party. Adam Cohen of FTI is the contact person on this assignment. He can be reached at <Adam.Cohen@FTIConsulting.com>.

SO ORDERED:



Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
October 13, 2009

- Appearances -

For Plaintiffs:

Darius Charney, Esq.
Sunita Patel, Esq.
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, New York 10012
(212) 614-6464

Jonathan C. Moore, Esq.
Beldock Levine & Hoffman LLP
99 Park Avenue, Suite 1600
New York, New York 10016
(212) 490-0900

Taylor M. Hoffman, Esq.
Covington & Burling LLP
620 Eighth Avenue
New York, New York 10018
(212) 841-1206

For Defendants:

David M. Hazan, Esq.
Linda Donahue, Esq.
Jennifer Rossan, Esq.
New York City Law Department, Office of the Corporation Counsel
100 Church Street
New York, New York 10007
(212) 788-8084